

AMENDED IN SENATE SEPTEMBER 2, 2005

AMENDED IN SENATE AUGUST 30, 2005

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AMENDED IN ASSEMBLY MAY 26, 2005

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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 550

Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Cohn, Dymally, Koretz, and
Spitzer)
(Coauthors: Senators Kuehl and Speier)

February 16, 2005

An act to add Article 3 (commencing with Section 2635) to Chapter 3 of Title 1 of Part 3 of the Penal Code, relating to correctional institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 550, as amended, Goldberg. Correctional institutions: sexual abuse.

Existing law provides that an employee with a department, board, or authority under the Youth and Adult Correctional Agency or a facility under contract with a department, who, during the course of his or her employment directly provides treatment, care, control, or supervision of inmates, wards, or parolees, and who engages in sexual activity

with a consenting adult who is an inmate, ward, or parolee, is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that imprisonment and fine, or by a fine of not more than \$10,000, imprisonment in a county jail for a period not exceeding one year or in the state prison, or by both that fine and imprisonment. Existing law provides that a 2nd or subsequent violation of these provisions is punishable by imprisonment in the state prison and that anyone who is convicted of a felony violation of this section shall be terminated, as specified, and shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.

~~This bill, the Sexual Abuse in Detention Elimination Act, the purposes of which would make legislative findings and declarations to the effect that its purpose would be to protect all inmates and wards from sexual abuse while held in institutions operated by the Department of Corrections and Rehabilitation would require that the Department of Corrections and Rehabilitation not hire any person who has been convicted of, or determined administratively to have committed, a sexual abuse-related offense for any position that involves inmate or ward contact.~~

~~This bill would require the agency to provide inmates; and wards; and correctional staff members with information in the form of a pamphlet describing the department's policies related to sexual conduct and the channels by which abuse should be reported with informational handbooks regarding sexual abuse in detention published outside organizations, as specified.~~

~~This bill would require the Department of Corrections and Rehabilitation to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental health care of inmate victims, and investigation of sexual abuse.~~

~~This bill would also create the Office of the Sexual Abuse in Detention Elimination Ombudsperson to ensure impartial resolution of inmate and ward sexual abuse complaints.~~

~~This bill would require the Department of Corrections and Rehabilitation to develop guidelines for allowing outside organizations and service agencies to provide resources and counseling to inmates and wards and to provide general information on the prevalence of prisoner rape to other agencies and its staff who may encounter survivors of sexual abuse in detention intended to~~

~~increase their awareness of, and sensitivity to, the issue of sexual abuse in detention.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
2 Sexual Abuse in Detention Elimination Act.
- 3 SEC. 2. The Legislature hereby finds and declares that the
4 purposes of the Sexual Abuse in Detention Elimination Act
5 include, but are not limited to, all of the following:
- 6 (a) To protect all inmates and wards from sexual abuse while
7 held in institutions operated by the Department of Corrections
8 and Rehabilitation.
- 9 (b) To make the prevention of sexual abuse in detention a top
10 priority in all state detention institutions.
- 11 (c) To ensure that the Department of Corrections and
12 Rehabilitation develop and implement protocols and procedures
13 designed to effectively respond to sexual abuse in detention
14 while protecting the safety of victims.
- 15 (d) To ensure that data collection concerning sexual abuse
16 across all institutions is accurate and accessible to the public.
- 17 (e) To increase the accountability of the Department of
18 Corrections and Rehabilitation ~~officials, wardens, and other staff~~
19 ~~who fail to detect,~~ to prevent, reduce, and respond to sexual
20 abuse in detention.
- 21 (f) To protect the 8th amendment right of inmates and wards
22 to be free from cruel and unusual punishment as guaranteed by
23 the United States Constitution.
- 24 (g) To protect the right of inmates and wards to be free from
25 cruel and unusual punishment as guaranteed by Section 24 of
26 Article 1 of the California Constitution.
- 27 (h) To establish an Office of the Sexual Abuse in Detention
28 Elimination Ombudsperson to monitor the prevention of and
29 response to sexual abuse that occurs in the Department of
30 Corrections and Rehabilitation institutions.
- 31 (i) To increase the efficiency of state expenditure on
32 corrections, correctional physical and mental health care,

1 substance abuse reduction, HIV/AIDS prevention, violence
2 prevention, and reentry programs for inmates and wards.

3 (j) To ensure compliance with the federal Prison Rape
4 Elimination Act of 2003, Public Law 108-79.

5 SEC. 3. Article 3 (commencing with Section 2635) is added
6 to Chapter 3 of Title 1 of Part 3 of the Penal Code, to read:

7

8

Article 3. Sexual Abuse in Detention

9

10 ~~2635. (a) For all employees hired by the Department of~~
11 ~~Corrections and Rehabilitation after the date this section becomes~~
12 ~~effective, no individual convicted of a sexual abuse-related~~
13 ~~offense, nor any individual who has been determined~~
14 ~~administratively to have committed a sexual offense shall be~~
15 ~~eligible for employment in a position that involves inmate or~~
16 ~~ward contact.~~

17 ~~2636. The Department of Corrections and Rehabilitation shall~~
18 ~~provide all inmates, wards, and correctional staff members,~~
19 ~~including anyone formally affiliated with the Department of~~
20 ~~Corrections and Rehabilitation who has physical contact with~~
21 ~~inmates or wards, with a handbook, available in English and~~
22 ~~Spanish, describing policies related to sexual conduct that shall~~
23 ~~contain, but is not limited to, the following elements:~~

24 ~~(a) An assertion of each person's right to be free from sexual~~
25 ~~abuse and the institution's explicit prohibition of acts of sexual~~
26 ~~abuse.~~

27 ~~(b) A definition of abuse that uses clear, frank language, and~~
28 ~~includes the indicators of inappropriate staff relationships with~~
29 ~~inmates or wards.~~

30 ~~(c) Information about the availability of confidential mental~~
31 ~~health counseling following sexual abuse.~~

32 ~~(d) A clear explanation of the steps the inmate or ward must~~
33 ~~take to file a grievance related to sexual abuse, an outline of the~~
34 ~~appeal process, and an explanation of how the inmate will know~~
35 ~~that internal remedies have been exhausted.~~

36 ~~(e) An explanation that the normal chain of command can be~~
37 ~~breached for the reporting of sexual abuse, and a list of~~
38 ~~individuals in the institution to whom inmates and wards can~~
39 ~~make these reports.~~

1 ~~(f) An assurance that the initial report will be confidential and~~
2 ~~that the inmate will have the option of whether or not to move~~
3 ~~forward with his or her initial complaint.~~

4 ~~(g) An assurance that retaliation against victims of sexual~~
5 ~~assault for coming forward with grievances will not be tolerated.~~

6 ~~(h) Information about how to request being housed in or out of~~
7 ~~segregation.~~

8 ~~(i) A description of emergency medical procedures following~~
9 ~~sexual assault incidents, including the importance of timely~~
10 ~~reporting and refraining from showering after an assault.~~

11 ~~(j) Information about how to contact the Office of the Sexual~~
12 ~~Abuse in Detention Elimination Ombudsperson.~~

13 ~~2637.—~~

14 *2635. The Department of Corrections and Rehabilitation*
15 *shall review informational handbooks regarding sexual abuse in*
16 *detention published by outside organizations. Upon approving*
17 *the content thereof, handbooks provided by one or more outside*
18 *organizations shall be made available to inmates and wards.*

19 *2636. For the purposes of this section, all references to*
20 *classification of wards shall take effect upon the adoption of a*
21 *classification system for wards developed by the Department of*
22 *Correction and Rehabilitation in compliance with Farrell v.*
23 *Allen, Alameda County Superior Court Case No. RG 03079344.*

24 The following practices shall be instituted to prevent sexual
25 violence and promote inmate and ward safety in the Department
26 of Corrections and Rehabilitation:

27 (a) The Department of Corrections and Rehabilitation *inmate*
28 *classification and housing assignment procedures shall take into*
29 *account risk factors that can lead to inmates and wards becoming*
30 *the target of sexual victimization or of being sexually aggressive*
31 *toward others. Relevant considerations include:*

32 (1) ~~Age and size~~ of the inmate or ward.

33 (2) Whether the offender is a violent or nonviolent offender.

34 (3) Whether the inmate or ward has served a prior term of
35 commitment.

36 (4) Whether the inmate or ward has a history of mental illness.

37 (b) The Department of Corrections and Rehabilitation shall
38 ensure that staff members intervene when an inmate *or ward*
39 appears to be the target of sexual harassment or intimidation.

1 ~~(e) The Department of Corrections and Rehabilitation shall,~~
2 ~~whenever possible, assign at least one female officer per shift to~~
3 ~~any housing unit or any area of any facility in which female~~
4 ~~detainees may be observed uncllothed.~~

5 ~~2638.~~

6 2637. The Department of Corrections and Rehabilitation shall
7 ensure that its protocols for responding to sexual abuse include
8 all of the following:

9 (a) The safety of an inmate or ward who alleges that he or she
10 has been the victim of sexual abuse shall be immediately and
11 discreetly ensured. ~~The housing option of the victim shall be~~
12 ~~followed to the greatest extent possible.~~ Staff shall provide the
13 safest possible housing options to inmates and wards who have
14 experienced repeated abuse. Housing options may include
15 discreet institution transfers.

16 (b) Inmates and wards who file complaints *of sexual abuse*
17 shall not be punished, either directly or indirectly, *for doing so*.
18 ~~Administrative segregation of those who report abuse shall not be~~
19 ~~automatic, unless requested by the victim.~~ If a person is
20 segregated for his or her own protection, segregation must be
21 nondisciplinary, ~~and shall not result in any loss of privileges.~~

22 (c) Any person who knowingly or willfully submits inaccurate
23 or untruthful information in regards to sexual abuse is punishable
24 pursuant to department regulations.

25 (d) Under no circumstances is it appropriate to suggest that an
26 inmate should fight to avoid sexual violence or to suggest that the
27 reported sexual abuse is not significant enough to be addressed
28 by staff.

29 (e) Staff shall not discriminate in their response to inmates and
30 wards who are gay, bisexual, or transgender who experience
31 sexual aggression, or report that they have experienced sexual
32 abuse.

33 (f) Retaliation against an inmate or ward for making an
34 allegation of sexual abuse shall be strictly prohibited.

35 ~~(g) Every employee of, and anyone formally affiliated with the~~
36 ~~Department of Corrections and Rehabilitation who has physical~~
37 ~~contact with inmates or wards, is required to read the handbook~~
38 ~~described in Section 2636 in order to be familiar with the~~
39 ~~department protocols described therein.~~

1 2639.

2 2638. Thoughtful, confidential standards of physical and
3 mental health care shall be implemented to reduce the impact of
4 sexual abuse on inmates and wards in the Department of
5 Corrections and Rehabilitation that include all of the following:

6 ~~(a) Clinics shall have a protocol in place to respond when~~
7 ~~sexual abuse is suspected, and all practitioners shall be trained~~
8 ~~accordingly.~~

9 ~~(b)~~

10 (a) Victims shall receive appropriate acute-trauma care for
11 rape victims, including, *but not limited to*, treatment of injuries,
12 HIV/AIDS prophylactic measures, ~~emergency contraception,~~
13 and, later, testing for sexually ~~transmissible~~ *transmittable*
14 diseases.

15 ~~(c)~~

16 (b) Health practitioners who conduct or encounter an inmate
17 or ward suffering from problems that might indicate sexual
18 abuse, such as trauma, sexually transmissible diseases,
19 pregnancy, or chronic pain symptoms, shall ask whether the
20 patient has experienced sexual abuse.

21 ~~(d)~~

22 (c) Practitioners should strive to ask frank, straightforward
23 questions about sexual incidents without shaming inmates or
24 displaying embarrassment about the subject matter.

25 ~~(e) When a sexual assault victim is treated outside of a~~
26 ~~corrections institution, hospital staff and rape crisis center~~
27 ~~representatives shall be allowed to consult with the victim in~~
28 ~~private.~~

29 ~~(f)~~

30 (d) Confidential mental health counseling intended to help the
31 victim to cope with the aftermath of abuse shall be offered to
32 those who report sexual abuse. Victims shall be monitored for
33 suicidal impulses, posttraumatic stress disorder, depression, and
34 other mental health consequences.

35 ~~(g)~~

36 (e) Any adult inmate in *mental health* counseling for any
37 reason shall be entitled to speak confidentially about sexual
38 abuse. ~~Policies that require staff members to disclose infractions~~
39 ~~committed at the institution shall be amended to except sexual~~

1 ~~abuse. All inmates who receive counseling for any reason shall~~
2 ~~be informed of this confidentiality policy.~~

3 ~~(h) Institutions shall, whenever possible, assist victims of~~
4 ~~sexual abuse in detention upon their release.~~

5 ~~2640.~~

6 2639. The Department of Corrections and Rehabilitation shall
7 ensure that the following procedures are performed in the
8 investigation and prosecution of sexual abuse incidents:

9 ~~(a) Adult inmate victims shall be entitled to choose whether to~~
10 ~~move forward with charges of abuse. The provision of safe~~
11 ~~housing options, medical care, and the like shall not be~~
12 ~~contingent upon the victim's willingness to press charges.~~

13 (b) Investigations into allegations of sexual abuse shall
14 include, *when deemed appropriate by the investigating agency*,
15 the use of forensic rape kits, questioning of suspects and
16 witnesses, and gathering of other relevant evidence.

17 (c) Physical and testimonial evidence shall be carefully
18 preserved for use in any future proceedings.

19 (d) Staff attitudes that inmates and wards cannot provide
20 reliable information shall be discouraged.

21 (e) If an investigation confirms that any employee has sexually
22 abused an inmate or ward, that employee shall be terminated.
23 Administrators shall report criminal sexual abuse by staff to law
24 enforcement authorities.

25 (f) Consensual sodomy and oral copulation among inmates is
26 prohibited by subdivision (e) of Section 286 and subdivision (e)
27 of Section 288a, respectively. Without repealing those
28 provisions, the increased scrutiny provided by this article shall
29 apply only to nonconsensual sexual contact among inmates and
30 custodial sexual misconduct.

31 ~~2641.~~

32 2640. The Department of Corrections and Rehabilitation shall
33 collect data as follows:

34 (a) The Department of Corrections and Rehabilitation shall
35 keep statistics on the sexual abuse of inmates and wards. Sexual
36 abuse incidents shall not be classified as "other" nor simply
37 included in a broader category of general assaults.

38 (b) Statistics shall include whether the abuse was perpetrated
39 by a staff member or other inmate, the results of the
40 investigation, ~~whether the victim chose to press charges, and any~~

1 resolution of the complaint by department officials and
2 prosecution authorities.

3 ~~(e) The Department of Corrections and Rehabilitation shall~~
4 ~~keep statistics on self-compliance with this act.~~ The data shall be
5 made available to the Office of the Sexual Abuse in Detention
6 Elimination Ombudsperson.

7 ~~2642.~~

8 2641. (a) The Office of the Sexual Abuse in Detention
9 Elimination Ombudsperson is hereby created in state government
10 to ensure the impartial resolution of inmate and ward sexual
11 abuse complaints. The office shall be based within the Office of
12 the Inspector General. The duties of this office may be contracted
13 to outside nongovernmental experts.

14 (b) The ombudsperson shall have the authority to inspect all of
15 the Department of Corrections and Rehabilitation institutions and
16 to interview all inmates and wards.

17 (c) The Department of Corrections and Rehabilitation shall
18 allow all inmates and wards to write confidential letters regarding
19 sexual abuse to the ombudsperson.

20 (d) Information about how to confidentially contact the
21 ombudsperson shall be ~~provided in inmate handbooks and~~ clearly
22 ~~posted on placards~~ in all of the Department of Corrections and
23 Rehabilitation institutions.

24 (e) The Office of the Inspector General shall investigate
25 reports of the mishandling of incidents of sexual abuse, while
26 maintaining the confidentiality of the victims of sexual abuse, if
27 requested by the victim.

28 ~~2643.~~

29 2642. The Department of Corrections and Rehabilitation
30 shall:

31 ~~(a) Develop guidelines for allowing outside organizations and~~
32 ~~service agencies to offer resources and provide confidential~~
33 ~~counseling~~ to inmates and wards, including, but not limited to,
34 the following:

- 35 (1) Rape crisis agencies.
- 36 (2) Hospitals.
- 37 (3) Gay rights organizations.
- 38 (4) HIV/AIDS service providers.
- 39 (5) Civil rights organizations.
- 40 (6) Human rights organizations.

1 ~~(b) Provide general information on the prevalence of prisoner~~
2 ~~rape to other governmental agencies and their staff who may~~
3 ~~encounter survivors of sexual abuse in detention, such as parole~~
4 ~~and probation officers, substance abuse treatment providers, and~~
5 ~~prisoner reentry professionals, to increase their awareness of, and~~
6 ~~sensitivity to, the reality that some of their clients may have~~
7 ~~encountered sexual abuse in detention.~~
8 2646:
9 2643. The provisions of this act are severable. If any
10 provision of this act or its application is held invalid, that
11 invalidity shall not affect other provisions or applications that can
12 be given effect without the invalid provision or application.